

Protest of) Date: September 18, 1987
)
 SPAW-GLASS CONSTRUCTION, INC.)
)
 Solicitation No. 479980-87-A-0003) P.S. Protest No. 87-46

ON RECONSIDERATION

Spaw-Glass Construction, Inc., (Spaw-Glass) has timely requested reconsideration of our decision in Spaw-Glass Construction, Inc., P.S. Protest No. 87-46, August 7, 1987, in which we denied its challenge to the contracting officer's rejection of Spaw-Glass' bid as untimely.

The standard which governs review of requests for reconsideration is set out in Postal Contracting Manual(PCM) 2-407.8 f. (10). A request for reconsideration must include a detailed statement of the factual and legal grounds upon which modification or reversal is sought "specifying any errors of law made or information not considered." In Fort Lincoln New Town Corporation, P.S. Protest No. 83-53, On Reconsideration, November 21, 1983, we stated:

Information not previously considered refers to that which a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest.... Reconsideration is not appropriate where the protester simply wishes us to draw from the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration.... Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.... [Citations omitted.]

In its protest, Spaw-Glass challenged the authority of MrRoger McFarland, an employee of the contractor providing construction management services to determine the arrival of the time set for the receipt of bids, a function which the Postal Service contracting officer had delegated to him. Our decision acknowledged the protester's point that PCM 2-402.1 contemplated that the bid opening official would be a postal employee, but stated:

[I]n the absence . of evidence of actual bias or prejudice (which...Spaw Glass

does not allege), the variance does not warrant corrective action....

Mr. McFarland's activity here was pursuant to the specific direction of the contracting officer, occurred in the presence of other postal employees also involved in the bid receiving process,...and was limited to closing the receipt of bids.... Further, the contracting officer was present shortly after Mr. McFarland declined to accept the late bid and ratified the action.

In its request for reconsideration, Spaw-Glass first returns to the matter of Mr. McFarland's authority. First, it reasserts its earlier-expressed view that because Mr. McFarland was not a postal employee, he lacked authority to establish the time set for the receipt of bids, objecting to our conclusions that corrective action is not warranted in the absence of evidence of actual bias, and challenging the contracting officer's authority to ratify that determination.

As to evidence of bias, the protester objects to this "new" rule as imposing too great a burden on the protester, contending that PCM 1-402.1 (c)'s requirement "that procurement actions be conducted in a manner 'beyond reproach'^{1/} requires some lesser standard. In a footnote, the protester challenges the decision's further conclusion that Mr. McFarland's participation created no appearance of impropriety, suggesting rationales why Mr. McFarland or his employer might have a prejudice against a particular bidder.

With respect to the contracting officer's ratification of Mr. McFarland's action, the protester cites a decision of the Comptroller General (22 Comp. Gen. 1083 (1942)) for the proposition that the contracting officer cannot ratify the action because the contracting officer initially lacked authority to make the delegation of authority.

Spaw-Glass next asserts that our previous discussion of the late bid regulations misconstrued its position. Objecting to the characterization of its position in footnote seven of the decision, the protester explains that its contention is that because PCM 2-303.1 speaks of bids being late "even though received only one minute late," the time for the receipt of bids is to be measured in hours and minutes, not in seconds. It thus contends that its bid, received at 2:00:40 must be considered to have been received at 2:00, and thus to have been timely received. It cites Larry Carlson & Associates, Inc., Comp. Gen. Dec. B-211918, November 21, 1983, 83-2 CPD & 599 and Fire Trucks, Inc., 55 Comp. Gen. 1103 (1976) in support of this view.

We are unpersuaded by the protester's further assertions.^{1/} Neither in its initial

^{1/}PCM 1-402.1 c. does not address directly the conduct of procurement actions. The section is part of an instruction to the Heads of Procuring Activities to ensure that "[t]he conduct of their purchasing personnel in relations with current contractors, prospective suppliers, customers, and the public is beyond reproach."

^{2/}Neither are we convinced that the arguments raised in support of reconsideration are different from those urged in the protest. In any event, these arguments were certainly available to the protester, and, therefore, this reconsideration request is subject to dismissal under the standards of Fort Lincoln New Town Corporation, supra. In order to eliminate any impressions we misconstrued the protester's arguments we will respond to the issues discussed in the reconsideration request.

submissions, nor here, has the protester offered anything other than supposition to support the possibility that Mr. McFarland closed the bidding with knowledge of Spaw-Glass's intent to bid.¹⁷ "Unsupported allegations, standing alone, are an insufficient basis upon which to sustain a protest." Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984. The protester's objections hinge solely upon the fortuitous circumstance that it was not a postal employee who established that the time for the receipt of bids had come. Since that action was taken consistently with the time established by the clock designated as the official clock, and in the presence of postal employees, the protester has failed to meet its burden of establishing any likelihood of impropriety.¹⁷

The protester's assertion that the time for bid opening must be construed in light of the phrase "even though received only one minute late" is also untenable. As our decision noted, such a reading overlooks the plain language of PCM 2-302, that a bid is late when received after the exact time set for opening bids.

The protester's reliance on Larry Carlson and Fire Trucks, Inc., seems misplaced. Each case involved bids which had been time-date stamped so as to appear timely, but as to which additional evidence established they were late. (In Fire Trucks, the time stamp, which was manual, not automatic, was reset only every fifteen minutes, and evidence indicated the bid was received seven minutes after the time set for bid opening; in Larry Carlson, although the mechanical time-date stamp showed the correct bid opening time, evidence established that it was three to four minutes slow because of an earlier power outage; the bid thus was received three or four minutes after the time set for bid opening.) We have no difficulty with the protester's proposition that when the time of receipt can be established only within a minute's precision, a bid marked at the minute of bid opening (and not otherwise shown to be untimely as in the cases discussed above) may be considered to be timely, even though the time of receipt might have been as many as 59 seconds later than the time designated. The protester, however, appears to be urging a different rule, with which we do not agree, that the announcement of the time for bid opening sets off a period of up to sixty seconds during which bids may still be submitted. That is very clearly not the law.

On reconsideration, we adhere to our decision denying the protest.

^{3/}Spaw-Glass alleges no previous contact between its representative and Mr. McFarland. This is not a case in which the door was shut in the representative's face; the representative arrived after the door was shut.

^{4/}The action which our decision referred to as being ratified by the contracting officer was not the establishing of the time for the receipt of bids, but the later action of refusing to accept Spaw-Glass's late bid, an action which our decision acknowledged was incorrect. This ratification, was, of course, not the sort of ratification described in the case protester now cites in this regard. Since our decision did not rest on the contracting officer's after-the-fact approval of Mr. McFarland's action, but instead on the contracting officer's general authority to designate Mr. McFarland, the case is not relevant to our holding.

William J. Jones
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Office of Contracts and Property Law
[Compared to original 3/4/93 WJJ]